

DANIEL G. BOGDEN
United States Attorney
District of Nevada
ROGER W. WENTHE
Assistant United States Attorney
Nevada Bar No. 8920
United States Attorney's Office
333 Las Vegas Boulevard South, Suite 5000
Las Vegas, Nevada 89101
Telephone: 702-388-6336
Facsimile: 702-388-6787
Email: *roger.wenthe@usdoj.gov*
Attorneys for the United States.

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

ROBERT H. ODELL, JR., *et al.*,
Plaintiffs,
)
v.
SYLVIA M. BURWELL, SECRETARY OF
HEALTH AND HUMAN SERVICES, *et al.*,
Defendants.)

Case No. 2:15-cv-1793-RFB-GWF

**DEFENDANT'S UNOPPOSED MOTION FOR LEAVE
TO FILE EXHIBITS UNDER SEAL**

Defendant Secretary of Health and Human Services, by undersigned counsel, hereby moves for leave to file exhibits under seal under Local Civil Rule 10-5(b). The Court should grant this unopposed motion because the exhibits the Secretary intends to file with her motion to dismiss contain a large amount of sensitive personal information about individuals who are not parties to this action.

Because Plaintiffs filed suit directly in district court without first seeking judicial review after exhausting administrative remedies, there is no administrative record for this case. However, Plaintiffs' Complaint refers to Medicare contractor determinations and Administrative Law Judge ("ALJ") decisions related to 53 Medicare Appeal numbers. *See* Compl. (ECF 1, filed 9/18/15) ¶ 11. Those

1 determinations and ALJ decisions contain medical and health information (including names and other
2 personally identifiable information) pertaining to numerous Medicare beneficiaries who are not parties
3 to this lawsuit. Defendant believes that the Court should have access to these determinations and
4 decisions that Plaintiffs reference in their Complaint, but recognizes the sensitivity of this information
5 and the need to prevent unnecessary disclosure.

6 Although there is a presumption in favor of access to judicial records, that presumption can be
7 overcome in an appropriate case. *See Johnson v. Greater Southeast Community Hosp. Corp.*, 951 F.2d
8 1268, 1277 n.14 (D.C. Cir. 1991). Here, there is no need for the public to access the unredacted
9 determinations and decisions related to Medicare beneficiaries who are not parties to this matter.

10 Any public interest in obtaining access to these exhibits is outweighed by the significant privacy
11 interests contained these records. Most of the personal information consists of detailed medical records
12 tied to a handful of specific individuals who are not parties to this case. The public disclosure of this
13 information would constitute an unwarranted invasion of these individuals' privacy.

14 For these reasons, Defendant respectfully requests leave to file under seal exhibits related to the
15 determinations and ALJ decisions referenced in paragraph 11 of the Complaint.

16 Counsel for Plaintiffs has indicated that he does not oppose this motion.

17 Dated: February 18, 2016
18

19 DANIEL G. BOGDEN
United States Attorney

20 /s/ Roger W. Wenthe
ROGER W. WENTHE
21 Assistant United States Attorney

22 IT IS SO ORDERED:

23 
GEORGE FOLEY, JR.
24 United States Magistrate Judge

25 Dated: February 19, 2016
26

CERTIFICATE OF SERVICE

The undersigned certifies that the following were served with a copy of the foregoing document on the date and by the method of service identified below:

CM/ECF:

All counsel of record

Dated: February 18, 2016

/s/ Roger W. Wenthe
ROGER W. WENTHE
Assistant United States Attorney